

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No.3288 of 2015

ORDER:

The petitioner, who is the sole accused in Crime No.353 of 2014 of Korutla Police Station, Karimnagar District, filed the present application under Section 438 Cr.P.C. seeking release in the event of his arrest in connection with the above crime, registered for the offences punishable under Sections 498-A and 306 IPC.

The allegations in the report are to the effect that the informant, who is the brother of the deceased was eking out his livelihood by doing business. The marriage of the deceased with the petitioner was performed on 14.03.2012 at Vemulavada temple. It was a second marriage for both of them. Subsequent to the marriage, the deceased came to know that the petitioner was having an affair with another lady prior to the marriage and the same was brought to the notice of the elders. A panchayat was held, wherein the petitioner was warned about the same. As there was no change in the attitude of the petitioner, the deceased again contacted the elders, but the elders told her that the same would be discussed after Dassera festival and accordingly sent her to her husband. On 23.09.2014 at about 8.00 a.m. the petitioner is alleged to have telephoned to the informant stating that the deceased committed suicide. Immediately the informant and others rushed to Korutla and suspected the cause of death of the deceased. Hence a report came to be lodged against the petitioner.

Heard learned counsel for the petitioner and learned Public Prosecutor appearing for the respondent-State.

Learned counsel for the petitioner mainly submits that even accepting the allegations in the report to be true no offence is made out against the petitioner. According to him, there is no allegation of any demand of dowry or cruelty meted out to the deceased.

On the other hand, the learned Public Prosecutor opposed the application contending that the allegation of petitioner having illicit intimacy with another lady prior to the marriage with the deceased itself amounts to mental cruelty as

such the petitioner is not entitled for any relief.

A perusal of the averments made in the First Information Report discloses that the petitioner married the deceased in the year 2012 and it was a second marriage to both of them. The averments in the report does not anywhere disclose about any harassment towards property or for demand of additional dowry. The allegation against the petitioner is that he was having extra marital affair with another lady prior to the marriage with the deceased. A panchayat was also convened, wherein the elders are alleged to have warned the petitioner about his conduct. The deceased is said to have committed suicide as there was no change in the attitude of the petitioner and he was continuing his extra marital relationship with the said lady.

Section 498-A IPC reads as under:

“498-A: Husband or relative of husband of a woman subjecting her to cruelty: Whoever being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.”

Explanation: For the purposes of this Section, “cruelty” means –

- a. any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- b. harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to meet such demand.

A two-Judge Bench of the Apex Court in *Pinakin Mahipatray RAwal v. State of Gujarath*, while dealing with extra marital relationship, held as under:

"Marital relationship means the legally protected marital interest of one spouse to another which include marital obligation to another like companionship, living under the same roof, sexual relation and the exclusive enjoyment of them, to have children, their upbringing, services in the home, support, affection, love, liking and so on. Extramarital relationship as such is not defined in the Penal Code. Though, according to the prosecution in this case, it

was that relationship which ultimately led to mental harassment and cruelty within the Explanation to Section 498-A and that A-1 had abetted the wife to commit suicide."

xxxxxx xxxxx xxxxx "We are of the view that the mere fact that the husband has developed some intimacy with another, during the subsistence of marriage and failed to discharge his marital obligations, as such would not amount to "cruelty", but it must be of such a nature as is likely to drive the spouse to commit suicide to fall within the Explanation to Section 498-A IPC. Harassment, of course, need not be in the form of physical assault and even mental harassment also would come within the purview of Section 498-A IPC. Mental cruelty, of course, varies from person to person, depending upon the intensity and the degree of endurance, some may meet with courage and some others suffer in silence, to some it may be unbearable and a weak person may think of ending one's life.

In view of the judgment referred to above and as the petitioner was maintaining his extra marital relationship with another lady even though he was warned by the elders which lead to the present incident, I am not inclined to grant anticipatory bail to the petitioner. It is always open to the petitioner to surrender before the concerned Court and move an application for grant of bail after giving notice to the Public Prosecutor, in which event the same shall be dealt with on merits in accordance with law either on the same day or at the earliest.

Accordingly, the Criminal Petition is dismissed.

JUSTICE C. PRAVEEN KUMAR

22.04.2015

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